



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 26, 1996

Ms. Jacquelyn Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
501 Police & Courts Building
Dallas, Texas 75201

OR96-1535

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID #101016.

The City of Dallas (the "city") received an open records request for "a copy of all public documents regarding a completed 1996 Internal Affairs Division investigation into allegations of misconduct against" two Dallas Police Department officers. You state that the documents responsive to this request relate to a pending Internal Affairs investigation and assert that the requested information is excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that certain information is excepted from disclosure under section 552.101 and the common-law right to privacy. However, it is our understanding that the city is a "civil service municipality," in which case section 143.089 of the Local Government Code is applicable. Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 916 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *Id.* at 949.

As the Internal Affairs Investigation is still pending, we assume that no disciplinary action has been taken and, therefore, the requested information is confidential under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.¹ However, if the investigation results in disciplinary action, then "any record, memorandum, or document relating to" the disciplinary action must be placed in the personnel files maintained by the civil service commission under section 143.089(a) and, upon request, must be released by the civil service commission under section 143.089(f) of the Local Government Code.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 101016

Enclosures: Submitted documents

¹We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

²As we resolve this matter under section 552.101, we need not address section 552.108.

cc: Mr. Robert Ingrassia, Reporter
Dallas Morning News
Communications Center
Dallas, Texas 75265
(w/o enclosures)